

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:01CV627-MU

WILLIE LEE BERRY,)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
M. TIMOTHY PORTERFIELD,)	
Private Attorney,)	
Defendant.)	
)	

THIS MATTER comes before the Court upon Plaintiff's Motion for Reconsideration, filed October 28, 2004 (document # 7).

The record of this matter reflects that on November 19, 2001, Plaintiff filed a Complaint under 42 U.S.C. § 1983 against his former attorney, setting forth allegations which sounded in legal malpractice. This Court, recognizing that such allegations were not cognizable under § 1983, dismissed the action for Plaintiff's failure to state a claim for relief. The Court also noted that Plaintiff's vague allegations of a conspiracy were too insubstantial to state a claim. Plaintiff's Complaint was dismissed by Order of November 29, 2001.

Nearly seven years later, on September 10, 2007, Plaintiff filed two post-judgment motions Motion taking issue with this Court's determinations. In particular, Plaintiff took issue with this Court's construction of his claim as alleging legal malpractice. Instead, Plaintiff contended the Court should have construed his claim solely as alleging an unlawful conspiracy in

violation of his constitutional rights. In any case, this Court denied Plaintiff's Motion on the ground that his arguments failed to establish that this Court lacked personal or subject matter jurisdiction, or that it acted in a manner inconsistent with due process of law.

By the instant Motion, Plaintiff now asks the Court to "alter or amend it[s] judgment . . ." because it "misconstrued [his] grounds for relief from judgment . . ." Again, however, the Court finds that Plaintiff has failed to set forth any matters which call into question the Court's original determination that Plaintiff's § 1983 action could not proceed against his former attorney. The Court did not erroneously decline to exercise its authority. Therefore, this Motion will be denied.

NOW, THEREFORE, IT IS ORDERED:

1. That Plaintiff's Motion for Reconsideration (document # 7) is **DENIED**.

SO ORDERED.

Signed: December 4, 2008



Graham C. Mullen
United States District Judge

